



United States
General Accounting Office
Washington, D.C. 20548

159146

Office of the General Counsel

B-277521

July 31, 1997

The Honorable Alan M. Hantman
Architect of the Capitol

Dear Mr. Hantman:

This responds to your July 15, 1997, letter asking whether there are options under current law for accepting the Radio and TV Correspondents Association's proposal to pay for certain modifications to the United States Capitol incident to the installation of broadcast equipment. Specifically, the Association, on behalf of the networks it represents, wishes to install equipment for broadcasting congressional events similar to equipment located in various facilities in the Capitol Complex that has been provided and is used by other broadcast networks. An available storage room in the Capitol has been identified for this purpose. However, the storage room will need modifications estimated to cost \$55,000 for power, cooling, fire protection, lighting, and cable pathways in order to support the installation and use of the broadcast equipment. The two options discussed below are available under current law for accepting the Association's proposal to pay for the work necessary to installing the broadcast equipment.¹

Receive a Gift From the Association

One option for implementing the Association's proposal is for the Association to make a gift of money to the U.S. Capitol Preservation Commission, of which the

¹We understand the broadcast equipment will be used only by the Association and the organizations that it represents, and the modifications are solely for the purpose of supporting the equipment. Because the broadcast equipment is neither for the official business of the government nor the type of relatively standard equipment likely to be readily accessed for official government business, this does not appear to present the risk of an improper augmentation of appropriations discussed in 70 Comp. Gen. 597 (1991). Further, locating the equipment on government property does not constitute an improper augmentation of appropriations simply because there is also a public benefit, namely the dissemination of information about the activities of the Congress, since this is a requirement for granting the permit or license.

Architect is an ex officio member. 40 U.S.C. § 188a(d) (1994). As a general rule, an agency may not accept for its own use gifts of money or property in the absence of express statutory authority. Using such gifts in the absence of statutory authority constitutes an unauthorized augmentation of appropriations. Principles of Federal Appropriations Law, 2-141 (GAO/OGC-92-13, December 1992). The U.S. Capitol Preservation Commission has the requisite statutory authority to accept a gift from the Association and use it for the proposed purposes.

The U.S. Capitol Preservation Commission was established for a number of purposes, including providing for improvements in, preservation of, and acquisitions for the United States Capitol and conducting other activities that directly facilitate, encourage, or otherwise support such purposes. 40 U.S.C. § 188a(a)(1), (3) (1994). The Commission may accept gifts of property and money to carry out its purposes as well as acquiring, administering, disposing, and conducting other transactions relating to such property. 40 U.S.C. § 188a-1(a). Donations are required to be deposited into the Capitol Preservation Fund, which has been established in the Treasury. 40 U.S.C. §§ 188a-1(c)(1), 188a-2(a). The Fund is available (1) to pay transaction costs, and similar expenses incurred relating to gifts or property and (2) for improvement and preservation projects for the United States Capitol (subject to the approval of the Committee on Appropriations of the House and the Committee on Appropriations of the Senate). 40 U.S.C. § 188a-2(b)(1), (2).

We believe these statutory provisions provide the Commission with the authority to accept a gift of money from the Association and use those funds to make the improvements to the Capitol proposed by the Association in accordance with statutory and other procedures governing improvement projects for the United States Capitol.

Grant a Permit to the Association

Another option for implementing the Association's proposal is for an authorized official of the Congress to grant the Association a permit under which the Association will pay for the needed modifications. The Comptroller General and the Attorney General have long recognized that even in the absence of express statutory authority, the head of an agency or department may grant a private person a nonexclusive, nontransferable, revocable permit or license to use government property (real or personal) for nongovernment business, provided that such use does not permanently injure the property and serves some purpose useful and beneficial to the government. B-191943, October 16, 1978; 44 Comp. Gen. 824 (1965); 36 Comp. Gen. 561 (1957); 22 Comp. Gen. 63 (1942); 30 Op. Att'y Gen. 470

(1915). These determinations lie within the discretion of the agency official empowered to grant the permit or license.²

Implementing the Association's proposal by granting it a permit presents certain issues regarding the relationship between the Architect, the Association, and the contractor performing the modification work. First, all improvements, alterations, additions, and repairs to the Capitol Building must be made by the direction and under the supervision of the Architect of the Capitol. 40 U.S.C. § 166 (1994). While the law does not require that the Architect actually perform the work on the Capitol or that the government pay for all such work, it does require that the work be performed under the oversight of the Architect.

Second, it would be consistent with the requirement that the work be performed under the Architect's oversight for the Architect to agree on the contractor to perform the work. This of course could be accomplished by the permit providing that the Association will select a contractor and administer the contract, but the contractor must be approved by the Architect and under the Architect's general oversight. Alternatively, there may be security or other reasons to have the Architect select the contractor and administer the contract by agreeing that the Architect will serve as the Association's representative in these matters. If this alternative is chosen, the permit and resulting contract should clearly provide that the Architect is not acting on behalf of the United States government, the Association alone is legally liable for paying the contractor, and there is a means for ensuring that the Association provides sufficient funds to cover the cost of the modifications.³

Finally, the permit should reflect the Association's responsibility for restoring the premises when the permit expires. The broadcast equipment and any equipment installed on the premises as part of the proposed modification are and will remain

²Which officials of the Congress would be authorized to grant a permit to the Association is a matter to be determined in accordance with the provisions of law and the Rules of the House of Representatives and the United States Senate relating to the control of, and the assignment of space in, the Capitol Building.

³A procedure that provides for the Association to retain custody of the funds and directly pay the contractor avoids a number of potential problems that may arise if the Architect or some other congressional official handles the funds. See White House Travel (GAO/AIMD-36-138R, September 18, 1996) and GAO reports cited therein.

the property of the Association (or the networks it represents). Accordingly, the Association will be responsible for removing equipment and restoring the premises as required by the Architect.

I trust the foregoing will be of assistance.

Sincerely yours,

Robert P. Murphy
General Counsel

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DIGEST

1. The U.S. Capitol Preservation Commission is authorized by 40 U.S.C. §§ 188a through 188a-5 (1994) to accept a gift of money from the Radio and TV Correspondents Association to pay for certain modifications to the United States Capitol incident to the installation of broadcast equipment in order to permit the entities it represents to broadcast congressional events.
2. An authorized official of Congress may grant the Radio and TV Correspondents Association a nonexclusive, nontransferable, revocable permit or license to locate broadcast equipment in the United States Capitol in order to permit the entities it represents to broadcast congressional events and to pay for modifications needed to permit the premises to be used for such purposes, provided that such use does not permanently injure the property and serves some purpose useful and beneficial to the government.